

## **Electronic Media: Paid Political Advertisements**

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**The Fair Political Practices Commission recently revised regulations regarding paid campaign advertisements sent electronically by political committees. This fact sheet provides general guidance. For specific rules refer to the regulations which are identified after the FAQs. The changes will become effective in mid-December 2010.**

### **Background**

In 2000, Proposition 34, passed by California voters, established new rules for campaign ads placed by political committees. In general, the new rules require identification of the top two contributors of \$50,000 or more to committees producing ballot measure ads and candidate ads paid for by independent expenditures. The disclaimers applied to political communications that were sent out via newspaper, television or radio, mailed to one's home/office as well as billboards and yard signs. The disclaimers did not apply to electronic media.

At the Commission's November meeting, the advertisement disclaimers required in traditional media were expanded to include advertisements sent via electronic media and received on a computer, blackberry, cell phone or other electronic devices. These ads must now have the required FPPC disclosure in a clear and conspicuous format.

The goal is to make publicly available required campaign finance disclosure information while allowing campaigns maximum flexibility to display the information in ways that do not unduly obscure or interfere with the message being sent out.

### **New Rules**

Certain campaign ads that appear on Internet web pages, blogs, mobile devices and the like must now identify funding sources or identify that the ad was prepared independently of a candidate. For example, an ad related to a state ballot measure, emailed by a campaign and viewed on a normal computer screen must include the same top two contributors of \$50,000 or more as if the ad was broadcast on television.

The new rules continue to provide for free political expression by not regulating volunteer activity. For example, an individual sending or forwarding emails, linking to a web site, or establishing and maintaining a website does not result in a contribution or expenditure under the law. Moreover, these activities are of only nominal value, and the value of the equipment used in such activities is not considered in determining the amount of political expenditures.

**An electronic ad sent in a text or graphic format** must have the FPPC disclaimers in the same size as the majority of text. The same disclaimers required of other media must be provided when the technology permits. The new rules recognize the uniqueness of electronic communications and ads that can not include full size disclaimers, such as a micro bars and text messages, can use other options such as inclusion of a link to a webpage that contains the required disclosure or use of a rollover display with the required FPPC disclosure. However, in order to ensure that the electronic media disclosure is apparent, it must be visible for at least four seconds and display a color contrast as to be legible.

**An electronic ad sent in a video** must include the FPPC disclaimer information in two formats, written and spoken. The written disclosure must be clear and legible and air for not less than four seconds. The disclaimer is not required to be spoken if the ad is 30 seconds or less and the written disclaimer is at least five seconds, or in the case of a 60 second ad, the written disclaimer is at least ten seconds.

**An electronic ad sent as an audio format** must have the FPPC disclosure information at the beginning or the end of the communication and must last at least three seconds.

**Exceptions:** The Commission recognizes that electronic media is varied and there may be cases when the disclaimer is technologically impracticable. For instance, the character limit constraints and inability to include attachments to SMS text message or other technologies would render it impracticable to provide full disclosure. In such cases, an abbreviated disclosure is permissible, as long as it is easily recognized by the public, such as FPPC#185734. For example, a state committee would have the FPPC number hyperlink to the Secretary of State's website page that lists the committee's campaign filings. Any such hyperlink must be to a government website with the committee's campaign statements so that the public can quickly determine the funding sources.

Moreover, in a case where even the ID number can not be displayed, the ad may be delivered without disclaimer information. These would be very rare and unusual situations where it is technically impossible for the committee to place the disclaimer on the electronic media advertisement and the inclusion of the disclaimer would severely interfere with the intended message.

## FAQs

1. Q. If I send an email to my friends that include an attachment of a political video I found on YouTube, do I have to worry about a disclaimer?
  - A. No. Unpaid messages sent to friends and others are not covered by the new rules. As noted earlier, the regulations do not apply to individuals sending or forwarding

emails, linking to a web site, establishing and maintaining a website or even producing a video for YouTube. These activities are of only nominal value, and the value of the equipment used in such activities is not considered in determining the amount of political expenditures.

2. Q. I have a blog that covers a hobby of mine, gourmet cooking. However, I'm thinking of writing about the upcoming election in my city. If I add my personal opinions and comments regarding local candidates and measures, would I incur any reporting requirements under the Political Reform Act?
- A. No--as long as you do not receive income specifically for the political message.

**The FPPC encourages volunteer and grass roots activity. These rules will not affect the use of the Internet as a flourishing source of robust and vibrant political discourse among citizens.**

- 3.. Q. What is the disclaimer?

- A. The disclaimer provides the public with information on what committee paid for the ad and if the committee received contributions of \$50,000 or more, those donors' names may be required to be listed on the ad. For example an ad may be required to state: *Committee in Support of Measure B, Major Funding by ABC Company and John Sanchez.*

An ad that expressly advocates a candidate and is made independent of the candidate--- an independent expenditure--- must also state that the ad was not authorized by the candidate.

4. Q. Our primarily formed ballot measure committee sends political advertisements via mass email. Do these ads need to identify the top \$50,000 donors?

- A. Yes the required FPPC disclaimer, in full, must be displayed. An abbreviated disclosure *may only be* used when it is impracticable or extremely difficult to include the full disclosure information (such as severe size, space or character-limit constraints) *and* when other methods of displaying the information (such as a rollover display, hyperlink to a webpage with disclosure information) are not available.

For instance, if the email is in the form of an MMS text, there are alternative means of providing the full disclosure information such as in an attachment or link to a webpage with the required FPPC information. Therefore, an abbreviated disclosure should not be used. *Only if* an alternative means of displaying the full disclosure are technologically not possible, may an abbreviated disclosure be used.

**5. Q. What is required on a banner ad?**

- A. It depends on the size of the advertisement. If the ad is large enough, it must include full disclosure information. If space is more limited, then alternative means of displaying the required disclosure information such as rollover display or a link to a webpage is permissible.

**6. Q. What type of disclosure is required for a paid political consultant who sends political ads through Twitter?**

- A. Full disclosure information is required on the sender's landing page on Twitter. Alternatively, the tweet may include a link to a webpage with the full disclosure information, or the sender's FPPC#. People who post on Twitter regularly offer shortened hyperlinks to direct a reader to a full story or source. Also, many "Tweeters" are able to produce their messages in less than the 140 characters allowed by creating a journalistic headline and providing a link for more information. While the full disclosures of top donors, etc., would not be practical, there are reasonable ways to provide recipients of Tweets with relevant disclosure.

**7. Q. Our committee is sending out blast text messages opposing a measure to a purchased list of mobile users. Do we need to include disclosure?**

- A. Yes, group SMS messages sent by a committee should include the abbreviated disclosure consisting of the committee's ID number, e.g., FPPC #1234567.

**8. Q. Our committee paid for a very small button ad on a website. What type of disclosure is required?**

- A. Because a button ad is limited in size, it is not technically possible to have the full FPPC disclaimer in the ad itself. In this case, an alternate means of displaying the information, such as a rollover display, a link to a webpage or any other method that provides the full disclosure information would be permissible.

**Statutory and Regulatory Authority**

Government Code Sections 84501-84509.

FPPC Regulations: 18450.1-18450.5 and 18215.2.